

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

FLOR PECINA
Plaintiff

V.

**UNITED NATIONAL INSURANCE
COMPANY,**
Defendant.

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**Civil Action No. 2:20-cv-54
JURY**

DEFENDANT’S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant, United National Insurance Company (“Defendant”) hereby files this Notice of Removal from the District Court, 156th Judicial District, of Aransas County, Texas to the United States District Court for the Southern District of Texas, Corpus Christi Division. In support of this Notice, Defendant respectfully shows as follows:

Preliminary Statement

1. This lawsuit involves a dispute over Defendant’s handling of Plaintiff’s insurance claims for damages to her property from Hurricane Harvey. United National Insurance Company is not a citizen of Texas. Accordingly, there is complete diversity between the parties, and as the amount in controversy exceeds \$75,000, removal is proper in this case.

Procedural Background

2. On August 25, 2019, Plaintiff filed an Original Petition, Jury Demand, Request for Disclosure, Request for Production, Interrogatories, and Request for Admission styled *Flor Pecina v. United National Insurance Company*, Cause No. 19-0277, in the District Court, 156th Judicial

District, of Aransas County, Texas. Defendant was served with the Original Petition on January 31, 2020. Defendant also demanded a trial by jury in its Original Answer filed on February 24, 2020 in the District Court, 156th Judicial District, of Aransas County, Texas.

3. This Notice of Removal has been filed within 30 days after receipt of the Petition as required by 28 U.S.C. § 1446(b).

Nature of the Suit

4. This lawsuit involves a dispute over the handling of Plaintiff's insurance claim for damages to her property resulting from a storm. Plaintiff claims she is entitled to an amount not to exceed \$75,000 for claims arising out of alleged damage to her residence sustained as a result of Hurricane Harvey in August 2017. The insured property is located within Aransas County, Texas, which is within the Southern District of Texas, Corpus Christi Division. Plaintiff asserts causes of action for breach of contract, violations of the Texas Insurance Code and bad faith against Defendant. Plaintiff seeks to recover actual damages, exemplary damages, and attorneys' fees. Defendant generally denies Plaintiff's claims. Defendant generally and specifically denies Plaintiff's claims, and Defendant has also pleaded a counterclaim against Plaintiff.

5. The storm which allegedly damaged the Plaintiff's property occurred on or around August 25, 2017. Plaintiff thereafter submitted a claim to Defendant against the Policy covering her property.

6. Defendant assigned an independent adjuster, Francisco Diaz, to adjust the claim.

7. Plaintiff alleges that Defendant was not diligent in investigating Plaintiff's loss and/or paying her claim.

Basis for Removal

8. Removal of this action is based on diversity of citizenship pursuant to 28 U.S.C. § 1332. Plaintiff is a Texas resident who is domiciled in Aransas County, Texas. *See Plaintiff's Original Petition, contained in Exhibit A.*

9. Defendant is a Pennsylvania company with its principal place of business in Bala Cynwyd, Pennsylvania. It is a wholly owned, direct subsidiary of American Insurance Service, Inc., a Pennsylvania corporation. Accordingly, Defendant is domiciled in and a resident of Pennsylvania. *See Affidavit of Eric Kehs.*

10. There is complete diversity of citizenship between the parties.

11. This Court has original jurisdiction over this case because it is a suit between citizens/entities of different states, and the claimed damages have the potential to exceed \$75,000.00, exclusive of interest and costs. 28 U.S.C. § 1332(a). Although Plaintiff attempts to prevent removal by including in her Petition a statement that she is not seeking an amount in excess of \$75,000.00, that attempt is improper insofar as it does not constitute a binding stipulation, and also because seeking a maximum amount not to exceed \$75,000.00 is not supported by the facts contained in other documentation as well as the damages sought in the Petition.

12. The pre-suit Notice of Claim letter demanded economic damages in the amount of \$41,020.83. *See Exhibit B, Plaintiff's Notice of Claim Letter.* Plaintiff's Petition seeks treble damages, which, if applied to the alleged economic damages amount previously demanded, would bring the total to \$123,062.49. This on its own exceeds the jurisdictional threshold amount. Plaintiff's attempt to put a \$75,000 cap on her potential recoverable damages is a clear attempt to simply avoid removal from state court to federal court.

The Removal is Procedurally Correct

13. Defendant was served with the Original Petition on January 31, 2020. Therefore, this Notice of Removal is filed within the 30-day time period required by 28 U.S.C. § 1446(b).

14. Venue is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action has been pending and because a substantial part of the events giving rise to the Plaintiff's claim allegedly occurred in this district.

15. Exhibit "A" to this Notice contains copies of all process and pleadings filed in the state court proceeding in Aransas County, Texas.

16. United National Insurance Company is the sole Defendant in this removed action; consequently, all Defendants join in and consent to this Removal.

17. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be filed with the Clerk of the County Courts for Aransas County, Texas and served upon Plaintiff through her counsel of record.

WHEREFORE, Defendant hereby requests that this action be removed from the District Court, 156th Judicial District, of Aransas County, Texas to the United States District Court for the Southern District of Texas, Corpus Christi Division, and that this Court enter such further orders as may be necessary and appropriate.

Dated February 24, 2020

Respectfully submitted,

/s/ Richard J. Kasson
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Fax: (210) 569-8490

**ATTORNEYS FOR DEFENDANT, UNITED
NATIONAL INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on this the **24th** day of **February 2020**, a true and correct copy of the foregoing instrument was duly served upon all counsel of record via the Court's electronic filing system, facsimile and/or regular mail:

Anthony G. Buzbee
Christopher J. Leavitt
THE BUZBEE LAW FIRM
JP Morgan Chase Tower
600 Travis, Suite 6850
Houston, Texas 77002
Email: tbuzbee@txattorneys.com
cleavitt@txattorneys.com

Stephen R. Walker
Gregory J. Finney
Juan A. Solis
Law Offices of Manuel Solis, PC
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Houston, Texas 77011
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gfinney@manuelsolis.com
jusolis@manuelsolis.com

/s/ Richard J. Kasson

RICHARD J. KASSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

FLOR PECINA
Plaintiff

V.

UNITED NATIONAL INSURANCE
COMPANY
Defendant.

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Civil Action No. 2:20-cv-54
JURY

AFFIDAVIT OF ERIC KEHS

STATE OF ARIZONA

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COUNTY OF MARICOPA

BEFORE ME, the undersigned authority, on this day personally appeared ERIC KEHS, who, being by me duly sworn, deposed as follows:

"My name is ERIC KEHS. I am over the age of eighteen (18) years, of sound mind, and competent to make this affidavit. I have never been convicted of a felony nor a misdemeanor involving moral turpitude. I am a Property Claims Manager for American Reliable Insurance Company, which was purchased by Global Indemnity Group, Inc. United National Insurance Company is one of Global Indemnity Group, Inc.'s indirect subsidiary insurance companies, and I have personal knowledge of the facts herein stated and they are true and correct.

United National Insurance Company is incorporated in Pennsylvania with its principal place of business in Pennsylvania. United National Insurance Company is not a citizen of Texas."

Further, Affiant sayeth naught.

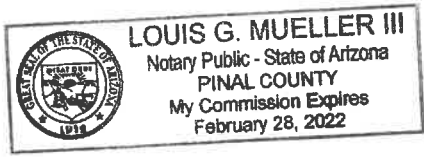
SIGNED this 24 day of February, 2020.



ERIC KEHS

Property Claims Manager – American Reliable
Insurance Company.

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this the 24TH day of February, 2020, witness my hand and seal of office.




Notary Public – State of Arizona

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) _____

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) _____

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE _____

SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____